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U.S. COURT OF APPEALS

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

UNITED STATES OF AMERICA,

Plaintiff - Appellee,

v.

LAMAR FACINE,

Defendant - Appellant.

No. 08-30186

D.C. No. 3:07-cr-00044-TMB-3

MEMORANDUM \*

Appeal from the United States District Court  
for the District of Alaska  
Timothy M. Burgess, District Judge, Presiding

Submitted March 4, 2010\*\*  
Seattle, Washington

Before: TASHIMA, FISHER and BERZON, Circuit Judges.

Lamar Facine appeals from his conviction on two counts of distribution of a controlled substance in violation of 21 U.S.C. § 841(a)(1), (b)(1)(A) and (b)(1)(C).

Facine pled guilty subject to a plea agreement. On appeal, he contends that the district court abused its discretion by denying his motion to withdraw his guilty

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\*This disposition is not appropriate for publication and is not precedent except as provided by 9th Cir. R. 36-3.

\*\*The panel unanimously concludes this case is suitable for decision without oral argument. *See* Fed. R. App. P. 34(a)(2).

plea, contending that his plea was not knowingly and voluntarily made. We dismiss the appeal for lack of jurisdiction.

This court lacks jurisdiction over Facine's appeal because Facine's plea agreement waived entirely his right to appeal his conviction. The agreement permitted him to challenge the voluntariness of his plea and ineffective assistance of counsel, but only on collateral review. The appeal waiver was knowingly and voluntarily made. *See United States v. Jeronimo*, 398 F.3d 1149, 1153-57 (9th Cir. 2005). Moreover, Facine bases this argument on a claim of ineffective assistance of counsel, and the record is inadequate either to establish that Facine's plea was involuntary or to permit appellate review of the effectiveness issue by this court. Facine's involuntariness of his guilty plea claim and ineffective assistance claim may be raised on collateral review, at which point an appropriate evidentiary record can be assembled.

**APPEAL DISMISSED.**